

DANIEL G. SWANSON, SBN 116556  
dswanson@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

CYNTHIA E. RICHMAN (D.C. Bar No. 492089; *pro hac vice*)  
crichman@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
Telephone: 202.955.8500  
Facsimile: 202.467.0539

JULIAN W. KLEINBRODT, SBN 302085  
jkleinbrodt@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: 415.393.8200  
Facsimile: 415.393.8306

Attorneys for Defendant APPLE INC.

MARK A. PERRY, SBN 212532  
mark.perry@weil.com  
JOSHUA M. WESNESKI (D.C. Bar No. 1500231; *pro hac vice*)  
joshua.wesneski@weil.com  
WEIL, GOTSHAL & MANGES LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: 202.682.7000  
Facsimile: 202.857.0940

MORGAN D. MACBRIDE, SBN 301248  
morgan.macbride@weil.com  
WEIL, GOTSHAL & MANGES LLP  
Redwood Shores Pkwy, 4th Floor  
Redwood Shores, CA 94065  
Telephone: 650.802.3044  
Facsimile: 650.802.3100

MARK I. PINKERT (Fla. Bar No. 1003102; *pro hac vice*)  
mark.pinkert@weil.com  
KATHERINE G. BLACK (Fla. Bar No. 1031465; *pro hac vice*)  
katie.black@weil.com  
WEIL, GOTSHAL & MANGES LLP  
1395 Brickell Avenue, Suite 1200  
Miami, FL 33131  
Telephone: 305.577.3100  
Facsimile: 305.374.7159

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

EPIC GAMES, INC.

Plaintiff, Counter-defendant  
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**APPLE INC.'S ADMINISTRATIVE  
MOTION REQUESTING GUIDANCE  
REGARDING EVIDENTIARY HEARING**

The Honorable Yvonne Gonzalez Rogers  
Hearing Date: May 8, 2024 (noticed date)  
Hearing Time: 8:30 AM  
Courtroom 1, 4th Floor

Defendant Apple Inc. (“Apple”) respectfully seeks this Court’s guidance regarding the Order Setting Evidentiary Hearing entered by the Court on April 23, 2024 (the “Order”). *See* Dkt. No. 925.

The Order “SETS an evidentiary hearing to further assess [Plaintiff Epic Games, Inc.’s (“Epic”)] arguments as well as Apple’s defenses” regarding Epic’s Motion to Enforce Injunction. Dkt. No. 925, at 3. On April 30, 2024, the parties exchanged witness lists (Dkt. Nos. 931, 932), pursuant to which they collectively may call up to seven witnesses:

Witness	Affiliation	Apple’s List	Epic’s List
Alex Roman	Apple	X	X
Matt Fischer	Apple	X	X
Carson Oliver	Apple	X	
Phil Schiller	Apple	X	
Ned Barnes	Expert	X	X
Alec Shobin	Epic		X
Benjamin Simon	Down Dog		X

After the witness lists were exchanged, the parties met and conferred regarding the hearing. The parties believe they can present these witnesses in the time allotted by the Court on May 8 and 10. As the Court is aware, Mr. Barnes is available only on May 10; the other witnesses are currently available either day.

The issue on which Apple seeks guidance is whether Epic or Apple should go first in the presentation of testimonial evidence. Apple includes Epic’s position—as confirmed after conferring with Epic’s counsel—for efficiency of obtaining the Court’s guidance. Both parties are of course prepared to proceed in the fashion that would be most useful to the Court.

Apple’s view is: The four Apple witnesses (Messrs. Schiller, Fischer, Roman, and Oliver) should testify on May 8, when the Court has a full day available. Apple would present each of them by direct examination and Epic would have the opportunity for cross-examination. On May 10, when the Court has a half day available, the three non-Apple witnesses (Messrs. Barnes, Shobin, and Simon) should testify. Epic would present each of them by direct examination and Apple would have the opportunity

1 for cross-examination. This approach would allow for the most efficient and orderly presentation of the  
 2 testimonial and documentary evidence regarding the issues identified in the Court’s Order, and is well  
 3 within the Court’s discretion to regulate “the manner in which the proceeding shall be conducted.”  
 4 *Cooke v. United States*, 267 U.S. 517, 537 (1925) (internal quotation omitted).

5 Epic’s view is: As the moving party, Epic should be permitted to present its case first and call  
 6 any of the noticed witnesses in the order of its choosing.<sup>1</sup> In setting this hearing, the Court identified the  
 7 showing that Epic must make and stated that Epic must do so by clear and convincing evidence. (Order  
 8 at 2.) It is therefore appropriate for Epic to present the witnesses and evidence it believes it needs to  
 9 satisfy its burden. Apple will have the opportunity to cross examine every witness called by Epic, and  
 10 may present by direct examination any noticed witness who has not yet testified (with Epic having the  
 11 opportunity for cross examination). For the sake of efficiency, all testimony from a particular witness  
 12 should be presented through consecutive examinations by the parties until concluded, with no  
 13 requirement that cross examination be limited to the topics covered on direct examination.

14  
 15 Dated: May 1, 2024

Respectfully submitted,

16 By: /s/ Mark A. Perry

17 Mark A. Perry

WEIL, GOTSHAL & MANGES LLP

18 Attorney for Apple Inc.  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27

28 <sup>1</sup> Contrary to what the chart presented above suggests, Epic named “Any Witness Identified by Apple”  
 in its own witness list, and may thus call Messrs. Oliver and Schiller in its own case if it so chooses.  
 (See Dkt. 931 at 2.)